



March 6, 2006

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: Request For Review of SLD Decision - Achieve Telecom Network of MA, LLC, dated October 12, 2005 -District of Columbia Public Schools - Ex Parte Filing - CC Docket No. 02-6

Dear Ms. Dortch:

Achieve Telecom Network of MA, LLC ("Achieve") submits this *ex parte* letter in connection with its pending October 12, 2005 request for review of a denial by the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") of an application by the District of Columbia Public School System ("DCPSS") to obtain E-rate support for certain services to be provided by Achieve. In that case, a change in responsible personnel was the principal factor causing the DCPSS to miss a deadline for submitting to the SLD certain certifications, certifications that related to information that DCPSS had previously submitted in response to a Selective Review Request.

On February 28, 2006, the Commission released its Order in *Greenfield Public School District*, DA 06-487, (Wireline Competition Bureau) (copy attached). Therein, the Commission waived the Greenfield District's failure to timely file (a) documentation in support of its FCC Forms 471 and (b) a subsequent appeal of the denial of its applications. The principal basis for the waiver grant was the departure of the responsible District employee, for military service, during the SLD application and appeals process. It was during his absence that the District failed to respond to the SLD's requests for additional information to support its Forms 471 and to timely appeal SLD's funding decisions. Indeed, the appeal was not filed until 7 months after the denial and there was a significant time gap before the Greenfield District even replaced the departed employee. Nevertheless, the Commission allowed that in his absence it would have been difficult for a replacement to determine the status of the applications and take over responsibility for the applications. Therefore, the Commission waived both the failure to timely provide the information and then timely appeal the denial of the applications.

Achieve's pending appeal also involves the unexpected departure of the responsible DCPS employee at a critical juncture in the SLD process. However, Achieve does not seek a waiver in connection with the failure to timely file substantive information, but only certifications relating to previously provided data. And of course, a timely appeal of the denial of the application for failure to provide the certifications was filed. Moreover, in the Achieve case, the newly responsible individual did inquire as to whether the certifications had been provided to SLD and was erroneously told that they had been. The equities that existed in the *Greenfield* decision, where the Commission waived far more serious failures to comply with the Commission's rules, are equally applicable to facts in the Achieve appeal, where the transgressions were far less. The Commission's reasoning in *Greenfield* logically requires a grant of Achieve's appeal.

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Canton, MA 02021
781-737-1890

Respectfully submitted,

A handwritten signature in black ink that reads "Joy Jackson". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Joy Jackson

President

Achieve Telecom Network of MA, LLC

Cc: Narda Jones
Erica Myers
Richard Lerner
Romanda Williams

40 Shawmut Road, Suite 200
Canton, MA 02021
781-737-1890

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Request for Waiver by)	File Nos. SLD-431911, SLD-431129
Greenfield Public School District)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: February 28, 2006**Released: February 28, 2006**

By the Chief, Wireline Competition Bureau:

1. The Wireline Competition Bureau (Bureau) has under consideration a Request for Waiver filed by the Greenfield Public School District, Shutesbury, Massachusetts (Greenfield), seeking waiver of the deadlines for filing documentation in support of its FCC Form 471 application and for filing an appeal with the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) or the Commission.¹ For the reasons set forth below, we grant Greenfield's request and remand the underlying applications to the Administrator for further action consistent with this Order.

2. In its Waiver Request, Greenfield concedes that it failed to timely file documentation in support of its FCC Forms 471.² Greenfield further admits that it did not appeal the SLD's funding decisions within 60 days of the date that the SLD issued its decisions on the two applications, as required by the Commission's rules.³ In support of its Waiver Request, Greenfield notes that its District Technology Coordinator, the person responsible for applying for funding and for filing appeals with the SLD, was called up for active duty with the United States military during the application and appeals process.⁴

¹ See Letter from Michael Pill, Special Counsel to the Greenfield Public School District, to Federal Communications Commission, dated October 12, 2005 (Waiver Request).

² Waiver Request at 2.

³ *Id.* See also 47 C.F.R. § 54.720(b). SLD issued the funding commitment decision letters for Greenfield's applications on December 3, 2004. See Letters from Schools and Libraries Division, Universal Service Administrative Company, to Scott Carbee, Greenfield Public School District, dated December 3, 2004 (Funding Commitment Decision Letters). Greenfield filed its appeal with SLD on July 21, 2005. See Letter from Carol S. Holzberg, Greenfield Public School District, to the Schools and Libraries Division, Universal Service Administrative Company, dated July 21, 2005 (Letter of Appeal). The Administrator denied Greenfield's appeal on September 29, 2005. See Letters from Schools and Libraries Division, Universal Service Administrative Company, to Carol S. Holzberg, Greenfield Public School District, dated September 29, 2005 (Administrator's Decisions on Appeal).

⁴ Waiver Request at 1-2. See also Letter of Appeal at 1-2.

3. In general, the Commission's rules may be waived for good cause shown.⁵ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁶ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁷ Accordingly, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.⁸

4. The Commission has strictly and consistently enforced filing deadlines, allowing waivers only in very limited and compelling situations.⁹ In this instance, however, we find that the particular facts make strict compliance with the rules and policies at issue here inconsistent with the public interest. Greenfield's District Technology Coordinator was called to active duty by the United States military during the application and appeals process.¹⁰ Specifically, the record shows that the District Technology Coordinator was on active military duty from May 6, 2004 through April 18, 2005.¹¹ It was during this time that Greenfield failed to respond to SLD's requests for additional information to support of its Forms 471 and to appeal SLD's funding decisions.

5. Greenfield informed SLD on August 24, 2004 that it had selected another person to serve as the E-rate contact person during the District Technology Coordinator's absence.¹² It would have been difficult for a replacement to determine the status of the applications, gain an understanding of the applicable rules, and take over responsibility for the applications given that the District Technology Coordinator had already left Greenfield to commence his military service. As the Commission recently stated, the E-rate program is fraught with complexity from the perspective of beneficiaries and the program rules and guidelines have changed many times.¹³ In addition, the record indicates that SLD sent

⁵ 47 C.F.R. § 1.3.

⁶ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

⁷ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

⁸ *Northeast Cellular*, 897 F.2d at 1166.

⁹ See, e.g., *Petitions for Waiver or Reconsideration of Sections 54.706, 54.709, and/or 54.711 of the Commission's Rules, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order and Seventeenth Order on Reconsideration, 15 FCC Rcd. 20769, 20783, para. 28 (1999); *Requests for Waiver by Atlanta Public Schools, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-368262, 82100, 382102, 382121, 356136, 358015, 352661, 385183, 365017, CC Docket No. 02-6, Order, 20 FCC Rcd 3632, 3633, para. 3 (Wireline Comp. Bur. 2005); *Request for Waiver by Stephen-Argyle Central School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-228975, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 15879, 15880-81, paras. 4-5 (Wireline Comp. Bur. 2001).

¹⁰ See Letter from Carol S. Holzberg, Greenfield Public School District, to Federal Communications Commission, dated January 6, 2006 (Supplemental Letter) (providing documentation establishing that Scott Carbee, the District Technology Coordinator, was on active duty during the application and appeals process).

¹¹ *Id.* He also served from March 1, 2004 through April 1, 2004. *Id.*

¹² E-mail from Joanne Blier, Greenfield Public School District, to Schools and Libraries Division, Universal Service Administrative Company, dated August 24, 2004 (informing SLD that Scott Carbee, their E-rate contact person, was called to active military duty and providing contact information for a new E-rate contact person).

¹³ *Comprehensive Review of Universal Service Fund, Management, Administration, and Oversight, Federal-State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Rural Health Care*

the funding decisions, which trigger the timeframe for an appeal, to the District Technology Coordinator and not his replacement even though SLD had been notified of the replacement.¹⁴ Finally, we note that Greenfield did not appoint a permanent replacement for the District Technology Coordinator until July 1, 2005.¹⁵

6. Moreover, given the importance of military service during a time of war, we find that it would be inconsistent with the public interest to penalize Greenfield for its employee's sudden departure to fulfill his military obligations. We therefore grant the Waiver Request and remand the underlying applications to the Administrator.

7. ACCORDINGLY, IT IS ORDERED, pursuant to authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 1.3, 54.722(a) and pursuant to the authority delegated in sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Waiver Request filed by Greenfield Public School District, Shutesbury, Massachusetts, on October 12, 2005, IS GRANTED, and the underlying applications ARE REMANDED to the Administrator for further action consistent with this Order.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Chief
Wireline Competition Bureau

Support Mechanism, Lifeline and Link-Up, Changes to the Board of Directors for the National Exchange Carrier Association, Inc., WC Docket Nos. 05-195, 02-60, 03-109, CC Docket Nos. 96-45, 02-6, 97-21, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308 (2005).

¹⁴ See Funding Commitment Decision Letters.

¹⁵ See Supplemental Letter at 2.